

1 On May 1, 2006, Backus filed in Utah state court a complaint
2 against Casablanca and its principal, Robert Black ("Black").
3 Nearly 8 months later, on December 20, 2006, Casablanca filed in
4 Nevada state court a complaint against Backus. Backus timely
5 removed to this court, brought a third-party complaint against
6 Black, and asserted counterclaims against Casablanca. Backus then
7 submitted its motion to stay or dismiss this action.

8 In exceptional circumstances, the court may stay or dismiss an
9 action where there are "substantially similar" concurrent state
10 court proceedings. *Colorado River Water Conservation Dist. v.*
11 *United States*, 424 U.S. 800, 817 (1976); *Nakash v. Marciano*, 882
12 F.2d 1411, 1416 (9th Cir. 1989). In deciding whether such
13 circumstances exist, the court is to consider a number of factors:
14 (1) whether either court has assumed jurisdiction over a *res*; (2)
15 the relative convenience of the forums; (3) the desirability of
16 avoiding piecemeal litigation; (4) the order in which the forums
17 obtained jurisdiction; (5) whether state or federal law controls;
18 and (6) whether the state proceeding is adequate to protect the
19 parties' rights. *Nakash*, 882 F.2d at 1415 (citing *Moses H. Cone*
20 *Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 25-26 (1978)).

21 The court has reviewed the Utah complaint and finds that the
22 parties in both actions are identical, although aligned
23 differently. In addition, Backus' claims pending in Utah are
24 identical to the counterclaims he has asserted in this action.
25 Although it is unclear what counterclaims, if any, Casablanca and
26 Black asserted in connection with the Utah action, it appears that
27 any such claims would have been compulsory under Utah R. Civ. P.
28 13, as they "arise[] out of the transaction or occurrence that is

1 the subject-matter of the opposing party's claim. . . ."

2 Accordingly, the claims pending in Utah state court are
3 "substantially similar" to those asserted in the current action.

4 After considering the factors stated above, the court finds it
5 appropriate to stay this action pursuant to the *Colorado River*
6 doctrine. Backus, who is a resident of Utah, has represented that
7 many witnesses and evidence are located in Utah and that Casablanca
8 advertises in that state. There is a danger that if both actions
9 move forward, the courts will reach conflicting resolutions. Utah
10 obtained jurisdiction of the action first (nearly 8 months before
11 Nevada). And finally, jurisdiction in this court is based on
12 diversity, and the complaint does not pose any federal questions;
13 accordingly, state law governs this action.

14 The court further notes that pursuant to Local Rule 7-2(d),
15 "[t]he failure of an opposing party to file points and authorities
16 in response to any motion shall constitute a consent to the
17 granting of the motion." Although plaintiff answered the
18 defendant's counterclaims after defendant filed the current motion,
19 it has not opposed the motion.

20 Accordingly, **IT IS ORDERED** that defendant's motion (#10) be
21 **GRANTED**. This action is **STAYED** pending resolution of the Utah
22 state court action or further order of the court and shall be
23 administratively **CLOSED**. Should the Utah action be resolved, the
24 defendant shall advise the court within 10 days.

25 DATED: This 28th day of March, 2007.

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28 UNITED STATES DISTRICT JUDGE